

**Remarks**

The indication that claims 4-11 and 15-17 include allowable subject matter is acknowledged with thanks. In reliance thereon, claim 4 has been amended into independent form by adding the subject matter of claim 1. It is not seen that the subject matter of claim 3 (from which claim 4 depended) is necessary to the patentability of amended claim 4. Further, the term "consisting" has been replaced as this was possibly confusing (in view of the use of "comprising" in claim 1) and was also not seen as necessary to the patentability of amended claim 4. Similar editorial changes have been made to the other claims. Consideration and allowance of claims 4-11 is respectfully requested as these claims include subject matter of claim 4 indicated to be allowable.

Claims 1, 3, 12-14, and 18 were rejected as anticipated by CHAPONNIERE et al. 6,449,490. The claims have been amended and reconsideration and withdrawal of the rejection are respectfully requested.

CHAPONNIERE et al. do not disclose the step of storing each of the periodic indications received for each channel during a time window, and thus the claims avoid the rejection under §102.

By contrast, CHAPONNIERE et al. disclose computing the average condition of periodic channel conditions (column 8, line 67 through column 9, line 2). The

reference does not disclose or suggest storing each of the periodic indications (and it is not inherent that these be stored in order to compute the average as the average can be computed by sequential weighting). The storage referenced in the Official Action at column 11, lines 3-5 is the storage of the results of the functions; i.e., the storage of the filter output value (the average data rate or channel condition) or the storage of the access metric (a function of the instantaneous channel condition or data rate and the average channel condition or data rate (column 10, lines 31-44)).

CHAPONNIERE et al. also do not disclose the step of determining, for each channel, the number of stored periodic indications during the time window for a respective channel that are better than a current transmission quality indication for the respective channel, to provide a rank of the respective channel based on the number of stored periodic indications.

Instead, CHAPONNIERE et al. disclose that an average of the periodic indications is determined and a ranking is defined according to the ratio of the current transmission quality indication for that channel and the average periodic indication for that channel.

Further, since each of the periodic indications is not stored, no information is available that would permit

a rank of the respective channels based on the number of stored periodic indications.

Accordingly, CHAPONNIERE et al. do not disclose all the features of amended claim 1 and claim 1 thereby avoids the rejection under §102.

By way of further explanation, in CHAPONNIERE et al. the distribution of the transmission resource among the different channels and the transmission quality of each selected channel is difficult to evaluate when the distribution of random variations of the transmission conditions of the channel vary, as is often the case in practice.

The invention of the amended claims herein avoids this problem in that it is possible to select the channel that has the best current transmission conditions while ensuring that all channels have equitable access to the transmission resource, regardless of the distribution of the random variations of the transmission conditions of the channels. The transmission quality is relatively easy to evaluate in the present invention as it is a function of only the distribution of random variations of the transmission conditions of that channel, not all the channels.

With reference to an example provided in the response filed May 7, 2008, the method claimed herein would select

channel 1, while the CHAPONNIERE et al. method would select channel 2, even though channel 2 demonstrates poor transmission quality at t-1, t-2, t-4, t-5 and t-8. The poor transmission at these times affects the average, thereby increasing the ratio used in CHAPONNIERE et al. The method claimed herein takes into account such random variations and selects channel 1 which has fewer random variations than channel 2.

Claim 18 has been similarly amended and is allowable for the same reasons.

The dependent claims are allowable at least by reason of their dependence on claim 1.

In view of the present amendment and the foregoing remarks, it is believed that the present application has been placed in condition for allowance. Reconsideration and allowance are respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment

to Deposit Account No. 25-0120 for any additional fees required  
under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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